

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

P.M.S. DIVERSIFIED)	
CONSTRUCTION SERVICES, LLC)	
)	
Plaintiff,)	Civil Action No.: 2:23-cv-11424
)	
vs.)	
)	
IT’S THE BRICK GUYS, LLC.,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	

COMPLAINT

Plaintiff P.M.S. Diversified Construction Services, LLC (“P.M.S. Diversified”), by its undersigned attorneys, alleges the following for its Complaint against Defendant It’s the Brick Guys, LLC. (“It’s the Brick Guys”):

Parties

1. P.M.S. Diversified is a limited liability company organized and existing under the laws of Michigan and having a place of business located at 5540 Bridgewood Dr. Sterling Heights, MI 48310.

2. On information and belief, It’s the Brick Guys, LLC is a limited liability company organized and existing under the laws of Michigan and having a registered agent location at 34691 Nova Dr., Clinton Twp, MI 48035.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338, as well as 15 U.S.C. § 1121, because this action arises under the trademark laws of the United States (Title 15 Chapter 22 of the United States Code). This Court has supplemental jurisdiction over the State claims pursuant to 28 U.S.C. § 1367(a) as the claims are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

4. This Court has personal jurisdiction over It's the Brick Guys because It's the Brick Guys resides in this district and has conducted and continues to conduct business in this district, and has engaged in activities related to P.M.S. Diversified's claims for federal trademark infringement and unfair competition.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because It's the Brick Guys resides in this district.

Common Allegations

6. P.M.S. Diversified provides residential construction services. One of its services is to provide brick paver services, for example constructing and repairing brick paver patios, walkways and driveways.

7. Since at least as early as 2012, P.M.S. Diversified adopted and has used the trademark “We’re The Guys” in connection with its construction and repair services for, *inter alia*, brick pavers.

8. P.M.S. Diversified has also used the mark



in connection with its construction and repair services for, *inter alia*, brick pavers since as early as 2016.



The **WE'RE THE GUYS** and We’re the Guys trademarks are collectively referred to hereafter as the “P.M.S. Diversified marks.”

9. P.M.S. Diversified has invested considerable time and money in connection with promoting its brick paver services under the P.M.S. Diversified marks.

10. P.M.S. Diversified is well-known withing the brick paver industry and has attained a favorable rating on Google reviews. P.M.S. Diversified has also established a sizeable social media base, advertising the P.M.S. Diversified marks. See, e.g., P.M.S. Diversified’s Facebook page at <https://www.facebook.com/search/top?q=pms%20brick%20pavers%20%22we%27re%20the%20guys%22>.

11. P.M.S. Diversified has spent considerable time, effort and money in connection with marketing the P.M.S. Diversified marks. P.M.S. Diversified has invested in digital, print and/or other mediums, including marketing and advertising on Facebook, Instagram, YouTube, SaveOn, local billboards, company trucks and trailers, the company website and yard signs.

12. As a result of P.M.S. Diversified's continual and substantial advertising, promotion, and the quality of its services provided under the P.M.S. Diversified marks, that date back to at least 2012, P.M.S. Diversified has acquired value, name and brand recognition, and goodwill in the use of the P.M.S. Diversified marks.

13. On April 12, 2022, P.M.S. Diversified registered the mark WE'RE THE GUYS, Registration No. 6,697,729, ("the '729 Registration) on the principal register in connection with: "Construction and repair services, namely, brick paver and concrete driveway repair, installation and restoration services" in International Class 37. A copy of the '729 Registration is attached to this Complaint as Exhibit A.

14. It's the Brick Guys provides brick paver services. It's the Brick Guys also operates a website, <https://www.itsthebrickguys.com>, that advertises and offers brick paver services.

15. It's the Brick Guys advertises its brick paving services using the marks



“It's The Brick Guys” and . See e.g., It's the Brick Guys website, attached to this Complaint as Exhibit B.


16. It's the Brick Guys offers directly competing services to those of P.M.S. Diversified.

17. It's the Brick Guys sells products that directly compete with P.M.S. Diversified.

**Count I - Violation of Section 43(a) of the Lanham Act
(Federal Trademark Infringement/Unfair Competition)**

18. P.M.S. Diversified repeats and realleges the allegations contained in paragraphs 1 through 17 as if fully set forth herein.

19. It's the Brick Guys has used, and is continuing to use, in interstate commerce and without authorization from P.M.S. Diversified, a reproduction, copy

and/or colorable imitation of P.M.S. Diversified's  trademark through its advertising, promotion, distribution, and offering for sale of its brick

paver services under the mark






20. It's the Brick Guys' use of the mark is similar


to P.M.S. Diversified's  mark.

21. It's the Brick Guys targets the same customers for its brick paver services that P.M.S. Diversified targets for its brick paver services.


22. It's the Brick Guys uses the same marketing channels in connection with its brick paver services as used by P.M.S. Diversified in connection with its brick paver services, such as, *inter alia*, the internet.

23. It's the Brick Guys' use in commerce of a reproduction, counterfeit, copy and/or colorable imitation of P.M.S. Diversified's  trademark in connection with It's the Brick Guys advertising, promotion, distribution, and offering for sale of brick paver services is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of It's the Brick Guys' services or as to It's the Brick Guys' affiliation, connection, approval, sponsorship, or association with P.M.S. Diversified.


24. It's the Brick Guys' actions constitute infringement of P.M.S.

 Diversified's trademark in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

25. It's the Brick Guys' use of a mark similar to P.M.S. Diversified's

 trademark in connection with It's the Brick Guys services in commerce has caused, is causing, and will continue to cause damage to P.M.S. Diversified's business, reputation, goodwill and profits.

26. On information and belief, and by virtue of the widespread exposure and success of P.M.S. Diversified's brick paver services under the

 trademark, It's the Brick Guys was actively aware of P.M.S. Diversified and its trademark rights when It's the Brick Guys began advertising and selling the It's the Brick Guys brick paver services, yet proceeded anyway to use a reproduction, counterfeit, copy and/or colorable imitation of P.M.S. Diversified's mark, and It's the Brick Guys is continuing to do so, thus rendering It's the Brick Guys' use of P.M.S. Diversified's trademark willful and deliberate.

**Count II – Violation of Section 32 of the Lanham Act
(Infringement of Trademark Registration No. 6,697,729)**

27. P.M.S. Diversified repeats and realleges the allegation contained in paragraphs 1 through 26 as if fully set forth herein.

28. It's the Brick Guys has used, and is continuing to use, in interstate commerce and without authorization from P.M.S. Diversified, a reproduction, copy and/or colorable imitation of the mark of P.M.S. Diversified's '729 trademark registration, WE'RE THE GUYS, through its advertising, promotion, and offering for sale of its brick paver services

29. It's the Brick Guys use of the It's the Brick Guys mark is similar to P.M.S. Diversified's WERE THE GUYS mark.

30. It's the Brick Guys targets the same customers for its brick paver services as P.M.S. Diversified targets for its brick paver services.

31. It's the Brick Guys uses the same marketing channels in connection with its brick paver services as used by P.M.S. Diversified in connection with its brick paver services, such as, *inter alia*, the internet.

32. It's the Brick Guys' use in commerce of a reproduction, copy and/or colorable imitation of the mark of P.M.S. Diversified's '729 trademark registration in connection with its advertising, promotion, distribution, and offering for sale of its brick paver services is likely to cause confusion, to cause mistake, and/or to deceive purchasers as to the source of the It's the Brick Guys services or as to It's

the Brick Guys' affiliation, connection, approval, sponsorship, or association with P.M.S. Diversified.

33. It's the Brick Guy's actions constitute infringement of P.M.S. Diversified's federally registered trademark WE'RE THE GUYS in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114 (a).

34. It's the Brick Guys' use of a mark similar to P.M.S. Diversified's registered WE'RE THE GUYS trademark in connection with It's the Brick Guys brick paver services in commerce has caused, is causing, and will continue to cause damage to P.M.S. Diversified's business, reputation, goodwill and profits.


35. On information and belief, and by virtue of the widespread exposure and success of P.M.S. Diversified's brick paver services under the WE'RE THE GUYS registered trademark, It's the Brick Guys was actively aware of P.M.S. Diversified and its trademark rights when It's the Brick Guys began advertising and selling the It's the Brick Guys brick paver services, yet proceeded anyway to use a reproduction, counterfeit, copy and/or colorable imitation of P.M.S. Diversified's registered mark, and It's the Brick Guys is continuing to do so, even after notice of infringement by P.M.S. Diversified, thus rendering It's the Brick Guys' use of P.M.S. Diversified's registered trademark willful and deliberate.

**Count III – Violation of Michigan Consumer Protection Act
(M.C.L. §445.903)**

36. P.M.S. Diversified repeats and realleges the allegation contained in paragraphs 1 through 35 as if fully set forth herein.

37. It's the Brick Guys' acts constitute unfair, unconscionable, or deceptive methods, acts or practices in conducting trade or commerce in violation of M.C.L. § 445.903.



38. It's the Brick Guys' use of the  and It's the Brick Guys marks causes a probability of confusion or misunderstanding as to the source, sponsorship, or approval, of goods or services in violation of M.C.L. § 445.903(1)(a).

39. It's the Brick Guys uses deceptive representations in connection with its services in violation of M.C.L. § 445.903(1)(b).

40. It's the Brick Guys' actions have caused and, unless enjoined by this Court, will continue to cause substantial injury and loss to the public and to P.M.S. Diversified. Based on It's the Brick Guys' unlawful activities, P.M.S. Diversified is entitled to injunctive relief and to recover damages, and as appropriate, punitive damages, costs and reasonable attorneys' fees.

Count IV – Common Law Unfair Competition

41. P.M.S. Diversified repeats and realleges the allegation contained in paragraphs 1 through 40 as if fully set forth herein.

42. It's the Brick Guys was aware of P.M.S. Diversified's prior use of the P.M.S. Diversified marks and adopted and used the It's the Brick Guys and



marks in disregard of P.M.S. Diversified's rights.

43. It's the Brick Guys' actions have resulted in the misappropriation of, and trading upon, P.M.S. Diversified's valuable goodwill and business reputation at P.M.S. Diversified's expense and at no expense to It's the Brick Guys. The effect of It's the Brick Guys' misappropriation of the goodwill symbolized by the P.M.S. Diversified marks is likely to unjustly enrich It's the Brick Guys, damage P.M.S. Diversified and confuse and/or deceive the public.

44. It's the Brick Guys' actions constitute unfair competition with P.M.S. Diversified, which has caused and will continue to cause irreparable injury to P.M.S. Diversified's goodwill and reputation unless enjoined.

45. An award of money damages alone cannot fully compensate P.M.S. Diversified for its injuries, and P.M.S. Diversified has no adequate remedy at law.

Count V- Unjust Enrichment

46. P.M.S. Diversified repeats and realleges the allegation contained in paragraphs 1 through 45 as if fully set forth herein.

47. By misappropriating P.M.S. Diversified's valuable goodwill and reputation through the improper use of marks confusingly similar to the P.M.S. Diversified marks, and by falsely advertising, It's the Brick Guys has been unjustly enriched to the detriment of P.M.S. Diversified.


48. It's the Brick Guys is realizing profit and will continue to realize a profit from its improper use of the marks confusingly similar to P.M.S. Diversified marks and its false advertising.

49. An award of money damages alone cannot fully compensate P.M.S. Diversified for its injuries, and P.M.S. Diversified has no adequate remedy at law.

50. P.M.S. Diversified is entitled to compensatory damages in the form of restitution and such other and further relief as the Court deems equitable and just.

RELIEF REQUESTED

WHEREFORE, P.M.S. Diversified respectfully requests that this Court enter a judgment that:

A. Finds It's the Brick Guys' use in commerce of a reproduction, copy and/or colorable imitation of the P.M.S. Diversified's  mark infringes the trademark and unfairly competes in violation of 15 U.S.C. § 1125(a).

B. Finds It's the Brick Guys' use in commerce of a reproduction, copy and/or colorable imitation of the P.M.S. Diversified's WE'RE THE GUYS mark infringes the '729 trademark registration in violation of 15 U.S.C. § 1114;

C. Awards P.M.S. Diversified all profits gained by It's the Brick Guys as a result of It's the Brick Guys' trademark infringement and unfair competition, increased to an amount this Court deems just, pursuant 15 U.S.C. § 1117;

D. Awards P.M.S. Diversified actual damages sustained as a result of It's the Brick Guys' trademark infringement and unfair competition, increased up to three times to an amount this Court deems just, pursuant 15 U.S.C. § 1117;

E. Awards P.M.S. Diversified its costs and any additional damages to which P.M.S. Diversified is entitled as a result of It's the Brick Guys' infringement and unfair competition;

F. Finds this case to be exceptional and awards P.M.S. Diversified its reasonable attorney fees pursuant 15 U.S.C. § 1117;

G. Orders It's the Brick Guys and its officers, directors, agents, servants, employees, successors, assigns, and all persons in active concert or participation with it, be preliminarily and permanently enjoined from infringing the '729 trademark registration and the P.M.S. Diversified marks;

H. Orders It's the Brick Guys to recall from any distributors, shippers, resellers, retailers, or wholesalers any and all advertising, products, packaging or any other items that infringe the '729 trademark registration or the P.M.S. Diversified marks;

I. Orders It's the Brick Guys to deliver to P.M.S. Diversified any and all advertising, products, packaging, or any other items that infringe the '729 trademark registration or the P.M.S. Diversified marks;

J. Awards P.M.S. Diversified actual damages sustained as a result of It's the Brick Guys' violations of M.C.L. § 445.903 together with reasonable attorneys' fees pursuant to M.C.L. § 445.911;

K. Awards P.M.S. Diversified compensatory damages in the form of restitution resulting from It's the Brick Guys' unjust enrichment; and

L. Awards P.M.S. Diversified costs, pre-judgment and post-judgment interest at the maximum allowable rate, fees, and other such further relief as the Court deems just and proper.

Respectfully submitted,

Dated: June 15, 2023

By: /s/ Richard W. Hoffmann

RICHARD W. HOFFMANN (P42352)

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(admission to follow)

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Inc.*

JURY TRIAL DEMANDED

P.M.S. Diversified demands a jury trial on all issues so triable.

Respectfully submitted,

Dated: June 15, 2023

By: /s/ Richard W. Hoffmann

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